

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KENTLIN HOPKINS,)	
)	
Plaintiff,)	Case No. 1:10-cv-166-SJM-SPB
)	
v.)	
)	
LT. APADACA, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on July 9, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on August 3, 2011 [67], recommends that:

1. The Doc Defendants' partial motion to dismiss second amended complaint [38] be granted in part and denied in part;
2. The motion to dismiss or in the alternative for summary judgment filed by Defendant Dr. Jeffrey Moll [44] be granted;
3. Defendant Ireland's motion to dismiss second amended complaint [50] be granted; and
4. The motion to dismiss filed by Defendant Beverly O'Rourke, CRNP [60] be granted; and
5. Plaintiff's claims against Defendants John Doe Supervisor, Lt. Bock, and "Supervisor" be dismissed, pursuant to the authority granted to courts under the Prison Litigation Reform Act, due to Plaintiff's failure to serve these Defendants in accordance with Rule 4(m) of the Federal Rules of Civil Procedure.

Plaintiff was allowed fourteen (14) days from the date of service in which to file objections. Service was made on Plaintiff by certified mail at SCI-Forest, where he is incarcerated. No objections to the Report and Recommendation have been filed to date. Although Plaintiff has filed a motion for leave to file a supplemental complaint, this motion does not impact the recommendations set forth in the Magistrate Judge's Report and Recommendation of August 3, 2011. Accordingly, after de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 2nd Day of September, 2011;

IT IS ORDERED that the DOC Defendants' partial motion to dismiss second amended complaint [38] shall be, and hereby is, GRANTED in part and DENIED in part as follows:

- (i) Said motion is GRANTED with respect to: (a) Plaintiff's Fourteenth Amendment Due Process claim against Defendant Apadaca premised upon Plaintiff's placement in the RHU; (b) Plaintiff's Eighth Amendment claims against Defendants Palmer, Riskus, and Caratelli premised upon alleged verbal harassment; (c) Plaintiff's Eighth Amendment against Defendants Barger and Apadaca premised upon alleged deliberate indifference claim to Plaintiff's serious medical needs; and (d) Plaintiff's First Amendment claims against Defendants Barger and Apadaca premised upon the alleged violation of his religious rights.
- (ii) Said motion is DENIED with respect to: (a) Plaintiff's Eighth Amendment claim against Defendants Barger, Straziser, and Palmer premised upon their alleged refused to provide Plaintiff food; and (b) Plaintiff's Fourteenth Amendment due process claim against Defendants Barger and Straziser premised upon their alleged refusal to allow Plaintiff to attend P.R.C. and misconduct hearings.

IT IS FURTHER ORDERED that the motion to dismiss or in the alternative for summary judgment filed by Defendant Dr. Jeffrey Moll [44] shall be, and hereby is, GRANTED.

IT IS FURTHER ORDERED that Defendant Ireland's motion to dismiss the second amended complaint [50] shall be, and hereby is, GRANTED.

IT IS FURTHER ORDERED that the motion to dismiss filed by Defendant Beverly O'Rourke, CRNP [60] shall be, and hereby is, GRANTED.

Based upon the foregoing, IT IS FURTHER ORDERED that Defendants Apadaca, Burkhart, Nicholson, Ireland, O'Rourke, Riskus, Caratelli, and Dr. Moll shall be terminated as parties to this case.

IT IS FURTHER ORDERED, pursuant to the authority granted to federal courts in the Prison Litigation Reform Act, that Plaintiff's claims against Defendants "John Doe Supervisor," Lt. Bock, and "Supervisor" shall be, and hereby are, DISMISSED due to Plaintiff's failure to service these Defendants in accordance with Rule 4(m) of the Federal Rules of Civil Procedure and, accordingly, these Defendants shall likewise be terminated as parties to this case.

The Report and Recommendation filed by Magistrate Judge Baxter on August 3, 2011 [67] is adopted as the opinion of this Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter